

A possible 'McCleary' for Washington higher education?

By Melissa Santos
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Lawmakers have been told repeatedly by the state Supreme Court that they must increase funding for schools from kindergarten through 12th grade.

Now a prominent constitutional law scholar in Washington says the state has a similar duty to adequately fund public colleges and universities, and that another court case could arise if the Legislature doesn't step up and do so.

Hugh Spitzer, who teaches constitutional law at the University of Washington, said the same part of the state constitution that defined public education as the state's "paramount duty" also defined the public school system as including normal schools and technical schools.

Those terms historically reference the state's three regional universities and Washington State University, Spitzer and his co-author Adam Sherman argue in an article published in the University of Washington law review.

A separate section of the state constitution establishes the Legislature's duty to foster and support state institutions, including public universities such as the University of Washington, Spitzer and Sherman said.

In a phone interview, Spitzer said the Legislature has been in a "process of gutting higher education funding over the past decade."

The Legislature cut state funding for public colleges and universities by 17 percent in its 2009-2011 budget, and then reduced higher education funding by an additional 24 percent in 2011-2013. Lawmakers allowed universities to impose double-digit tuition increases during that time to offset the loss. Tuition income now surpasses state funding at four-year universities.

"Unless they can figure out a way to provide adequate funding, it's probable that someone would come up with a lawsuit or a challenge at some point that says the state is shirking this obligation," said Spitzer, who also co-wrote "The Washington State Constitution: A Reference Guide" with late state Supreme Court Justice Robert Utter.

The state Supreme Court ruled in 2012 that the Legislature was failing to fully fund K-12 schools, and must do so by 2018. That case, known as *McCleary*, was brought by a group of parents, school districts and education advocacy groups.

The McCleary case is driving budget discussions this year after a September contempt order from the state Supreme Court, in which the court told lawmakers that they'll face unspecified legal sanctions if they don't make progress on education funding this year.

The state Attorney General's Office said it's unclear whether a similar court case could develop over higher education funding, mainly because no such case has ever been filed.

"Our state Supreme Court has clearly established the state's constitutional obligation to fund K-12 education," spokeswoman Alison Dempsey-Hall wrote in an email. "There have not been any cases addressing whether a similar obligation extends to higher education. We can't comment further because we would simply be speculating."

Frank Ordway, lobbyist for the League of Education Voters, said he thinks there could be some legal basis for arguing that the state must pay for public colleges.

He said the Legislature should end the debate by passing legislation explicitly stating that higher education is a part of basic education in the state, and therefore must be funded.

"The evidence is clear that you need a post-secondary degree to compete in the modern-day economy," Ordway said.

Funding for higher education is something that legislative budget writers say they're focused on improving this year, whether it's constitutionally required or not. Lawmakers froze tuition increases in their 2013-15 budget, and Gov. Jay Inslee has proposed that they do so again for the next two years.

When asked whether the state could end up with a McCleary-like mandate for public university funding, Republican Sen. Andy Hill of Redmond said, "I don't think it will come to that."

"I think regardless of what the court says, education is a continuum, (from ages) zero to 23," said Hill, who chairs the Senate Ways & Means Committee. "If we're doing the right thing as a Legislature, we shouldn't have any problems."

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